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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. MARIA CARRILLO CORONA, Defendant and Appellant.	D033855 (Super. Ct. No. CF6155)

APPEAL from a judgment of the Superior Court of Imperial County, Raymond A. Cota, Judge. Affirmed.

Maria Carrillo Corona pleaded guilty to conspiracy to transport marijuana (Pen. Code, § 182) and was placed on formal probation for three years. Corona appeals, contending the court erroneously denied her motion to suppress incriminating statements she made to the police officers. She contends that the officers did not (1) advise her of her rights under the Multilateral Vienna Convention on Consular Relations and Optional Protocol on Disputes of April 24, 1963 (21 U.S.T. 77, T.I.A.S. No. 6820, hereafter Vienna Convention), (2) properly advise her of her rights under *Miranda v. Arizona*

(l966) 384 U.S. 436 (*Miranda*) before an initial interrogation, and (3) readvise her of her *Miranda* rights before a second interrogation. We affirm.

FACTS

In November 1998 the California Highway Patrol contemporaneously stopped two vehicles, one of which was following the other. Yolanda Sanchez was driving one vehicle, in which officers found a substantial amount of marijuana, and Corona was driving the other vehicle.

One officer told Corona he was investigating whether she was involved in a possible drug transaction. At approximately 10:00 a.m., he advised her under *Miranda* and asked her, "Did you understand? Are you now willing to answer any questions?"

Beginning at 1:00 p.m., a different officer interviewed Corona for 30 to 40 minutes. During this interview, she confessed she had conspired to transport marijuana. The officer did not readvise Corona of her *Miranda* rights because he believed she had previously been advised of, and waived, those rights.

DISCUSSION

I

Article 36 of the Vienna Convention[1]

The court denied Corona's motion to suppress statements she made to the investigating officers. She contends the court should have granted her suppression motion because the officers did not advise her of her rights under Article 36. The parties

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1 All references to Article 36 are to Article 36 of the Vienna Convention.

stipulated that the officers did not advise Corona of her Article 36 rights. The legal question is whether the remedy for this violation is exclusion of the statements she made to the officers.

The Vienna Convention is a 79-article, multilateral treaty signed by the United States and Mexico. (*United States v. Lombera-Camorlinga* (9th Cir. 2000) 206 F.3d 882, 884, cert. den. *sub. nom. Lombera-Camorlinga* (2000) ___ U.S. ___ [121 S.Ct. 481] (*Lombera-Camorlinga*).) It was negotiated in 1963 and ratified by the United States Senate in 1969. (*Ibid*.) Its provisions cover a number of issues, including arrest of a foreign national, that requires consular intervention or notification. (*Id.* at p. 884.) Article 36 provides in part: "1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State: [¶] . . . [¶] (b) if he [or she] so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his [or her] rights under this sub-paragraph." (21 U.S.T. at p. 101.)

Corona urges us to hold that the Vienna Convention creates a personally enforceable right. We need not resolve the issue, however, because the Ninth Circuit has held that regardless of what personal rights the Vienna Convention creates, suppression

of evidence is not an appropriate remedy for violations of Article 36.[2] (*Lombera-Camorlinga*, *supra*, 206 F.3d at p. 885.) Corona urges us to disregard this holding, contending the exclusionary rule is the proper remedy when constitutional or other rights have been violated. She also claims that because the Vienna Convention requires the arresting state to immediately notify the arrestee of his or her Vienna Convention rights and the proper official in his or her country of origin of the arrest, and leaves the enforcement mechanism to the state, the exclusionary rule is the correct remedy for the violation.

In *Lombera-Camorlinga*, the Ninth Circuit rejected similar arguments. It noted the Vienna Convention was drafted three years before *Miranda*. (*Lombera-Camorlinga*, *supra*, 206 F.3d at p. 886.) Further, although the rights to counsel and against self-incrimination are essential to our criminal justice system, those same rights are not recognized or enforced worldwide. (*Ibid.*) Unlike *Miranda*, the Vienna Convention does not require law enforcement officials to stop interrogation if the arrestee invokes his or her rights under it, and does not link consular notification to police interrogation. (*Lombera-Camorlinga, supra*, 206 F.3d at p. 886.) Because the exclusionary rule is the sanction for a violation of uniquely American rights, there is no indication the drafters of the Vienna Convention intended the exclusionary rule be used as a remedy for its violation. (*Lombera-Camorlinga, supra*, 206 F.3d at p. 886.)

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2 We have located no decisions by California state courts interpreting Article 36.

Corona also urges that exclusion is the proper remedy when confessions are obtained in violation of the defendant's rights to be brought before a judicial officer. However, Article 36 does not require that a defendant be brought before anyone. Further, Corona cites no case in which the exclusionary rule has been used as a remedy for a treaty violation and the treaty itself does not provide that remedy. Corona provides us with no reason to disregard *Lombera-Camorlinga*. Exclusion is not a remedy for violations of Article 36 and the court correctly denied Corona's suppression motion that was based on Article 36.

II

Miranda Issues

Corona contends the court should have granted her suppression motion because the officers did not properly advise her of her *Miranda* rights before the first interrogation and did not reapprise her of those rights before the second interrogation.

In considering a claim that a statement or confession is inadmissible because it was obtained in violation of a defendant's *Miranda* rights, we accept the trial court's resolution of disputed facts and inferences and its evaluations of credibility, if they are supported by substantial evidence. However, we independently determine from the undisputed facts, and those properly found by the trial court, whether the challenged statement was illegally obtained. (*People v. Boyer* (1989) 48 Cal.3d 247, 263, disapproved on other grounds in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1.)

A person who is suspected or accused of a crime and has been taken into custody or otherwise restrained may not constitutionally be interrogated by police unless that

person first knowingly and intelligently waives his or her right to silence, the presence of an attorney, and appointment of counsel if indigent. (*Miranda*, *supra*, 384 U.S. at pp. 444-445, 458, 467.) A *Miranda* waiver is valid if the defendant comprehended "'all of the information that the police are required to convey' by *Miranda*." (*People v. Clark* (1993) 5 Cal.4th 950, 987, quoting *Moran v. Burbine* (1986) 475 U.S. 412, 424.)

Miranda warnings need not be given in an exact prescribed form. "'[T]he "rigidity" of *Miranda* [does not] exten[d] to the precise formulation of the warnings given a criminal defendant,' and 'no talismanic incantation [is] required to satisfy its strictures.' [Citation.]" (*Duckworth v. Eagan* (1989) 492 U.S. 195, 202-203.)

A. *Initial Interrogation*

After reading Corona her *Miranda* rights, the officer asked her, "Did you understand?" Corona responded affirmatively, and waived her rights, subsequently confessing. Corona contends the officer improperly advised her because he asked her, "Did you understand" instead of, "Do you understand each of these rights?"

The distinction between, "Did you understand" and, "Do you understand each of these rights" is not significant. The officer asked Corona "did you understand" immediately after reading the aggregated *Miranda* rights to which Corona was entitled. It is illogical to assume Corona understood the statement to refer only to the officer's last statement rather than the entirety of the warning. There is no requirement that officers state, "Do or did you understand" after each right is read, or that the officers ask whether the person understood each *Miranda* right. The timing of the officer's question left no doubt he was referring to the entire *Miranda* advisement.

Further, Corona presented no evidence that she did not understand or that her mental functioning was impaired. To the contrary, she was alert enough to lie to the officers, permitting a reasonable inference that Corona understood what the officer meant when he said, "Did you understand?" The court correctly denied the suppression motion made on the ground of the inadequacy of the *Miranda* advisements given Corona before the initial interrogation.

B. *Second Interrogation*

Whether a *Miranda* warning for one interrogation is sufficient for a subsequent interrogation is a factual question in each case. (*People v. Thompson* (1992) 7 Cal.App.4th 1966, 1971.) Here, the court found that the two-to-three-hour time lapse between the first and second interrogation was not significant. We review that determination to determine whether substantial evidence supports the findings.

A defendant need not be readvised of his or her rights before each separate interrogation (*People v. Johnson* (1973) 32 Cal.App.3d 988, 997) as long as the officer advised the defendant within a period of time reasonably contemporaneous with the interrogations. (*People v. Jacobo* (1991) 230 Cal.App.3d 1416, 1422.) Courts have found intervals between the advisement and the interrogation as short as 15 minutes and as long as 24 hours to be reasonably contemporaneous. (*People v. Thompson, supra*, 7 Cal.App.4th at p. 1973 and cases cited therein; *People v. Jacobo, supra*, 230 Cal.App.3d at p. 1423 and cases cited therein.)

Here, officers advised Corona of her Miranda rights between 10:00 and 10:25 a.m. The subsequent interview occurred at 1:00 p.m. Two to three hours is not a period in

which Corona was likely to forget the advisement, particularly because she was in custody and in handcuffs during the entire period and was moved to a new location for the sole purpose of continuing the interview. There is no showing Corona was under the influence of alcohol or drugs, was sleep-deprived, or was otherwise impaired when officers advised her. She presented no evidence she forgot the initial advisement. Substantial evidence supports the trial court's conclusion that the second interrogation was reasonably contemporaneous with the *Miranda* advisement given before the first interrogation. The court correctly denied the motion to suppress on the ground Corona was not readvised of her *Miranda* rights before the second interview.

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

KREMER, P. J.

HUFFMAN, J.

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DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. MARIA CARRILLO CORONA, Defendant and Appellant.	D033855 (Super. Ct. No. CF6155) ORDER CERTIFYING OPINION FOR PARTIAL PUBLICATION

THE COURT:

The opinion filed June 6, 2001, is ordered certified for publication with the exception of part II.

The attorneys of record are:

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KREMER, P. J.